

1 Kathleen Sullivan (SBN 242261)
2 kathleensullivan@quinnmanuel.com
3 QUINN EMANUEL URQUHART &
4 SULLIVAN LLP
5 51 Madison Avenue, 22nd Floor
6 New York, NY 10010
7 Telephone: (212) 849-7000
8 Facsimile: (212) 849-7100

9 Sean S. Pak (SBN 219032)
10 seanpak@quinnmanuel.com
11 Amy H. Candido (SBN 237829)
12 amycandido@quinnmanuel.com
13 John M. Neukom (SBN 275887)
14 johnneukom@quinnmanuel.com.
15 QUINN EMANUEL URQUHART &
16 SULLIVAN LLP
17 50 California Street, 22nd Floor
18 San Francisco, CA 94111
19 Telephone: (415) 875-6600
20 Facsimile: (415) 875-6700

21 Mark Tung (SBN 245782)
22 marktung@quinnmanuel.com
23 QUINN EMANUEL URQUHART &
24 SULLIVAN LLP
25 555 Twin Dolphin Drive, 5th Floor
26 Redwood Shores, CA 94065
27 Telephone: (650) 801-5000
28 Facsimile: (650) 801-5100

16 Attorneys for Plaintiff Cisco Systems, Inc.

1 Steven Cherny (*admitted pro hac vice*)
2 steven.cherny@kirkland.com
3 KIRKLAND & ELLIS LLP
4 601 Lexington Avenue
5 New York, New York 10022
6 Telephone: (212) 446-4800
7 Facsimile: (212) 446-4900

8 Adam R. Alper (SBN 196834)
9 adam.alper@kirkland.com
10 KIRKLAND & ELLIS LLP
11 555 California Street
12 San Francisco, California 94104
13 Telephone: (415) 439-1400
14 Facsimile: (415) 439-1500

15 Michael W. De Vries (SBN 211001)
16 michael.devries@kirkland.com
17 KIRKLAND & ELLIS LLP
18 333 South Hope Street
19 Los Angeles, California 90071
20 Telephone: (213) 680-8400
21 Facsimile: (213) 680-8500

17 **UNITED STATES DISTRICT COURT**

18 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

20 CISCO SYSTEMS, INC.,

21 Plaintiff,

22 vs.

23 ARISTA NETWORKS, INC.,

24 Defendant.

25 CASE NO. 5:14-cv-5344-BLF (PSG)

26 **DECLARATION OF SARA E. JENKINS
27 IN SUPPORT OF CISCO'S
28 ADMINISTRATIVE MOTION TO FILE
UNDER SEAL CONFIDENTIAL
INFORMATION IN CISCO SYSTEMS,
INC.'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

29 Judge: Hon. Beth Labson Freeman

30 02198-00010/8116481.1

31 DECLARATION OF SARA E. JENKINS IN SUPPORT OF ADMINISTRATIVE MOTION TO FILE UNDER
32 SEAL

33 Case No. 5:14-cv-05344-BLF

DECLARATION OF SARA E. JENKINS

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2 I, Sara E. Jenkins, declare as follows:

3 **1.** I am an attorney licensed to practice in the State of California and am admitted to
 4 practice before this Court. I am an associate with the law firm Quinn Emanuel Urquhart &
 5 Sullivan, LLP, counsel for Plaintiff Cisco Systems, Inc. (“Cisco”). I have personal knowledge of
 6 the matters set forth in this Declaration, and if called as a witness I would testify competently to
 7 those matters.

8 **2.** I make this declaration in support of Cisco’s Administrative Motion to File Under
 9 Seal Confidential Information in connection with Cisco’s Motion for Partial Summary Judgment
 10 (“Motion.”). I make this declaration in accordance with Civil Local Rule 79-5(e) on behalf of
 11 Cisco to confirm that the information contained in the documents referenced in the Sealing Motion
 12 should be sealed.

13 **3.** As a Motion for Partial Summary Judgment, Cisco’s Motion is considered to be
 14 dispositive. In this context, materials may be sealed so long as the party seeking sealing provides
 15 “compelling reasons supported by specific factual findings that outweigh the general history of
 16 access and the public policies favoring disclosure.” *Kamakana v. City & Cnty. of Honolulu*, 447
 17 F.3d 1172, 1178-1179 (9th Cir.2006). Compelling reasons for sealing court files generally exist
 18 when such “court files might have become a vehicle for improper purposes,’ such as the use of
 19 records to gratify private spite, promote public scandal, circulate libelous statements, or release
 20 trade secrets.” *Id.* (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)). Under
 21 this standard, compelling reasons have been found to seal documents such as those containing
 22 confidential source code (*Apple, Inc. v. Samsung Electronics Co., Ltd.*, Case No. 11-cv-1846, D.I.
 23 2190 at 3 (Dec. 10, 2012); documents related to the “internal procedures for addressing cardholder
 24 fraud notifications” of a bank, *id.* at *2-3 (*Cowan v. GE Capital Retail Bank*, No. 13-cv-03935-
 25 BLF, 2015 WL 1324848, at *1-3 (N.D. Cal. Mar. 24, 2015)); documents containing “information
 26 about [a party’s] business performance, structure, and finances that could be used to gain unfair

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1 business advantage against them,” *Schwartz v. Cook*, No. 5:15-cv-03347-BLF, 2016 WL 1301186,
 2 at *2 (N.D. Cal. Apr. 4, 2016); documents containing “highly sensitive information regarding [a
 3 party’s] product architecture and development,” *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-
 4 BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014); documents in the form of “emails
 5 containing information about [a party’s] business practices, recruitment efforts, and discussions
 6 regarding potential partnerships with other product manufacturers,” *Koninklijke Philips N.V. v.*
 7 *Elec-Tech International Co., Ltd.*, No. 14-cv-02737-BLF, 2015 WL 581574, at *1-2 (N.D. Cal.
 8 Deb. 10, 2015); and documents containing “information regarding non-public recruitment efforts
 9 and business practices” of a party, *id.* at *2-3.

10 **4.** Pursuant to Civil L.R. 79-5(e), compelling reasons exist to seal the documents that
 11 contain Cisco confidential information and are identified in the Sealing Motion and below. Cisco
 12 also moves to seal documents designated as confidential by Arista and third parties and expects
 13 that they will file a supporting declaration pursuant to Civil L.R. 79-5(e)(1).

Document	Portions to Be Filed Under Seal	Party With Claim of Confidentiality
Cisco’s Motion for Partial Summary Judgment (“Motion”)	Highlighted Portions	Arista
Exhibits 1-26; 40-41; 44-48; 51-53; 64-70; 72; 74-75; 77-82 to the Declaration of Amy H. Candido in Support of Cisco’s Motion for Partial Summary Judgment	Entire	Arista

Document	Portions to Be Filed Under Seal	Party With Claim of Confidentiality
Exhibits 55, 58 to the Declaration of Amy H. Candido in Support of Cisco's Motion for Partial Summary Judgment	Highlighted Portions	Arista
Exhibit 54 to the Declaration of Amy H. Candido in Support of Cisco's Motion for Partial Summary Judgment	Highlighted Portions	Cisco
Exhibit 50 to the Declaration of Amy H. Candido in Support of Cisco's Motion for Partial Summary Judgment	Entire	Hewlett Packard
Exhibit 76 to the Declaration of Amy H. Candido in Support of Cisco's Motion for Partial Summary Judgment	Entire	Mike Volpi, Arista
Exhibit 1 to the Declaration of Judith A. Chevalier in Support of Cisco's Motion for Partial Summary Judgment	Highlighted Portions	Arista
Exhibit 1 to the Declaration of Kevin Almeroth in Support of Cisco's Motion for Partial Summary Judgment	Highlighted Portions	Hewlett Packard and Arista
Exhibit 2 to the Declaration of Kevin Almeroth in Support of Cisco's Motion for Partial Summary Judgment	Highlighted Portions	Arista

5. Exhibits 1-26; 40-41; 44-48; 51-53; 55; 58; 64-70; 72; 74-75; and 77-82 to the Declaration of Amy H. Candido ("Candido Declaration") are documents previously designated as

1 confidential by Arista. Cisco files this motion with respect to these exhibits to provide Arista with
 2 the opportunity to file a supporting declaration pursuant to Civil L.R. 79-5(e)(1).

3 **6.** Exhibit 50 to the Candido Declaration is a deposition designated as Highly
 4 Confidential- Attorneys' Eyes Only under the Protective Order by Hewlett Packard. Cisco files
 5 this motion with respect to this exhibits to provide Hewlett Packard with the opportunity to file a
 6 supporting declaration pursuant to Civil L.R. 79-5(e)(1).

7 **7.** Exhibit 76 to the Candido Declaration is a deposition designated as Highly
 8 Confidential- Attorneys' Eyes Only under the Protective Order by Arista and Mike Volpi. Cisco
 9 files this motion with respect to this exhibits to provide them with the opportunity to file a
 10 supporting declaration pursuant to Civil L.R. 79-5(e)(1).

11 **8.** Exhibit 1 to the Declaration of Judith A. Chevalier in Support of Cisco's Motion
 12 for Partial Summary Judgment contains information that Arista designated as Highly Confidential-
 13 Attorneys' Eyes Only under the Protective Order. Cisco files this motion with respect to this
 14 exhibit to provide Arista with the opportunity to file a supporting declaration pursuant to Civil
 15 L.R. 79-5(e)(1).

16 **9.** Exhibit 1 to the Declaration of Kevin Almeroth in Support of Cisco's Motion for
 17 Partial Summary Judgment contains information that Arista and Hewlett Packard designated as
 18 Highly Confidential- Attorneys' Eyes Only under the Protective Order. Cisco files this motion
 19 with respect to this exhibit to provide Arista and Hewlett Packard with the opportunity to file a
 20 supporting declaration pursuant to Civil L.R. 79-5(e)(1).

21 **10.** Exhibit 2 to the Declaration of Kevin Almeroth in Support of Cisco's Motion for
 22 Partial Summary Judgment contains information that Arista designated as Highly Confidential-
 23 Attorneys' Eyes Only under the Protective Order. Cisco files this motion with respect to this
 24 exhibit to provide Arista with the opportunity to file a supporting declaration pursuant to Civil
 25 L.R. 79-5(e)(1).

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1 **11.** Exhibit 54 to the Candido declaration contains Cisco's confidential source code and
2 was designated as Highly Confidential- Attorneys' Eyes Only. As confidential source code,
3 compelling reasons exist to seal this document. *See Delphix Corp. v. Actifio, Inc.*, No. 13-cv-
4 04613-BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014); *Apple, Inc. v. Samsung*
5 *Electronics Co., Ltd.*, Case No. 11-cv-1846, D.I. 2190 at 3 (Dec. 10, 2012).

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct, and that this declaration was executed in San Francisco, California,
8 on July 1, 2016.

/s/ Sara E. Jenkins

Sara E. Jenkins

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28 DECLARATION OF SARA E. JENKINS IN SUPPORT OF ADMINISTRATIVE MOTION TO FILE UNDER
SEAL

SIGNATURE ATTESTATION

Pursuant to Civ. L.R. 5-1(i)(3), the undersigned hereby attests under penalty of perjury that concurrence in the filing of this document has been obtained from the signatory indicated by the “conformed” signature (/s/) of registered ECF User Sara E. Jenkins.

Dated: June 30, 2016

/s/ Amy H. Candido
Amy H. Candido

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SEAL